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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,960	01/26/2001	Jo Ann H. Squier	10247	7021

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EXAMINER

SIMONE, CATHERINE A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/770,960

Applicant(s)

SQUIER ET AL.

Examiner

Catherine Simone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Withdrawn Rejections***

1. The 35 U.S.C. 102 rejection of claims 1-3, 11, 12, 14-16, 20 and 24 as anticipated by Duncan of record in the Office Action mailed 8/25/04, Page 3, Paragraph #6 has been withdrawn due to the Applicant's amendment filed 11/22/04.
2. The 35 U.S.C. 102 rejection of claims 1-3, 14, 15, 24 and 25 as anticipated by Dronzek, Jr. of record in the Office Action mailed 8/25/04, Pages 5-6, Paragraph #9 has been withdrawn due to the Applicant's amendment filed 11/22/04.
3. The 35 U.S.C. 103 rejection of claims 4-10, 22 and 23 over Duncan in view of Marotta et al. of record in the Office Action mailed 8/25/04, Pages 7-8, Paragraph #12 has been withdrawn due to the Applicant's amendment filed 11/22/04.
4. The 35 U.S.C. 103 rejection of claim 26 over Dronzek, Jr. in view of Swan et al. of record in the Office Action mailed 8/25/04, Page 8, Paragraph #13 has been withdrawn due to the Applicant's amendment filed 11/22/04.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. **Claims 1-7, 10-21 and 27** are rejected under 35 U.S.C. 102(b) as being anticipated by Swan et al. (4,965,123).

Swan et al. discloses a thermoplastic label comprising a first skin layer comprising polypropylene or polyethylene and a first cavitating agent, wherein the first skin layer has a first side and a second side, and the first skin layer is cavitated (see col. 8, lines 5-15 and 34-38); and a cold glue adhesive on the first side of the first skin layer (see col. 9, lines 15-39); a first tie layer comprising polypropylene or polyethylene and a second cavitating agent, wherein the first tie layer has a first side and a second side, the first tie layer is cavitated, and the first side of the first tie layer is adjacent to the second side of the first skin layer (see col. 3, lines 36-40 and 57-67 and col. 12, lines 35-64); a core layer comprising polypropylene or polyethylene and a third cavitating agent, wherein the core layer has a first side and a second side, the core layer is cavitated, and the first side of the core layer is adjacent to the second side of the first tie layer (see col. 4, lines 28-38 and col. 8, lines 34-38); and a second skin layer comprising a polyolefin, wherein the second skin layer has a first side and a second side, the second skin layer is not cavitated, and the second skin layer is on the second side of the core layer (see col. 6, lines 23-25). Regarding **claim 2**, the first skin layer comprises polypropylene and has a thickness of at least about 0.3 mil (see col. 7, lines 4-7 and col. 8, lines 34-38 and col. 9, line 10). Regarding **claim 3**, the first skin layer comprises polyethylene (see col. 8, lines 34-38). Regarding **claims 4 and 5**, the core layer and first tie layer comprise polypropylene (see col. 8, lines 34-38). Regarding **claim 6**, the first tie layer has a thickness of at least about 0.3 mil (see col. 7, lines 4-7). Regarding **claim 7**, the second skin layer comprises polypropylene (see col. 8, lines 34-38). Regarding **claim 10**, each of the first skin layer, first tie layer, core layer, and second skin layer

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comprises polyethylene (see col. 8, lines 34-38). Regarding **claim 11**, the first skin layer comprises at least about 15% by weight of the thermoplastic label (see col. 11, lines 4-5).

Regarding **claim 12**, the first, second and third cavitating agent are independently selected from the group consisting of calcium carbonate, polybutylene terephthalate, polyamides, acrylic resins, acetals, hollow or solid preformed glass spheres, metal beads, metal spheres, ceramic spheres (see col. 6, lines 41-45 and 62-65 and col. 8, lines 12-15). Regarding **claim 13**, the first cavitating agent comprises calcium carbonate (see col. 8, lines 12-15). Regarding **claims 14 and 15**, the label has a thickness of from about 3 mils to about 5 mils and from about 1 mil to about 10 mils (see col. 7, lines 4-7 and col. 9, line 10). Regarding **claim 16**, the label is biaxially oriented (see col. 11, line 18). Regarding **claims 17-19**, the first cavitating agent comprises at least about 25%, 35% and 50% by weight of the first skin layer (see col. 8, lines 21-24). Regarding **claim 20**, the first skin layer comprises homopolymer polypropylene (see col. 8, lines 34-38). Regarding **claim 21**, the first skin layer comprises homopolymer polypropylene (see col. 8, lines 34-38) and the first cavitating agent comprises at least about 25% by weight of the first skin layer (see col. 8, lines 21-24). Regarding **claim 27**, the label has a cold glue adhesive on the first side of the skin layer to adhere to the surface of a container (see col. 9, lines 15-38).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 8, 9, 22, 23, 28 and 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Swan et al. (4,965,123) in view of Marotta et al. (5,888,640).

Swan et al. discloses a thermoplastic label comprising a first skin layer comprising polypropylene or polyethylene and a first cavitating agent, wherein the first skin layer has a first side and a second side, and the first skin layer is cavitated (see col. 8, lines 5-15 and 34-38); and a cold glue adhesive on the first side of the first skin layer (see col. 9, lines 15-39) to adhere the label to the surface of a container; a first tie layer comprising polypropylene or polyethylene and a second cavitating agent, wherein the first tie layer has a first side and a second side, the first tie layer is cavitated, and the first side of the first tie layer is adjacent to the second side of the first skin layer (see col. 3, lines 36-40 and 57-67 and col. 12, lines 35-64); a core layer comprising polypropylene or polyethylene and a third cavitating agent, wherein the core layer has a first side and a second side, the core layer is cavitated, and the first side of the core layer is adjacent to the second side of the first tie layer (see col. 4, lines 28-38 and col. 8, lines 34-38); and a second skin layer comprising a polyolefin, wherein the second skin layer has a first side and a second side, the second skin layer is not cavitated, and the second skin layer is on the second side of the core layer (see col. 6, lines 23-25). However, Swan et al. fails to disclose a second tie layer comprising polypropylene or polyethylene, wherein the second tie layer is not cavitated and is adjacent to the second side of the core layer and the first side of the second skin layer and further a metal layer on the second side of the second skin layer. Marotta et al. teaches that it is old and well-known in the analogous art to have a tie layer comprising polypropylene adjacent a skin layer and a core layer (see col. 6, lines 12-14 and 20) and a metal layer on the second side of a second skin layer (see col. 8, lines 31-32) for the purpose of producing a biaxially oriented

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thermoplastic label with the ability to shrink to fit the contours of the container without the development of any noticeable crazing of the metal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the label in Swan et al. with a second non-cavitated tie layer comprising polypropylene adjacent to the second side of the core layer and adjacent the first side of the second skin layer and a metal layer on the second side of the second skin layer as suggested by Marotta et al. in order to produce a biaxially oriented thermoplastic label with the ability to shrink to fit the contours of the container without the development of any noticeable crazing of the metal.

#### ***Response to Arguments***

9. Applicant's arguments filed 11/22/04 have been fully considered but they are not persuasive. Applicant argues that "None of US '369, US '123, US '664 and US '640, either alone or any combination thereof, discloses or suggests the subject matter of the amended or new claims." However, it is to be pointed out that as shown above Swan et al. (US 4,965,123) clearly teaches the thermoplastic label as is now claimed in amended claim 1. Therefore, the claims fail to patentably define over the prior art as applied above.

#### ***Response to Amendment***

10. The declaration under 37 CFR 1.132 filed 11/22/04 is insufficient to overcome the rejection of claim 1 based upon the Swan et al. reference (US 4,965,123) applied in the 102 (b) rejection as set forth in the last and present Office because: a declaration filed under 37 CFR 1.132 cannot overcome a 102(b) rejection. See MPEP 706.02(b).

*Conclusion*

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Catherine A. Simone  
Examiner  
Art Unit 1772  
January 28, 2005



HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

2/1/05